

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED

IN RE: GENE E. MCKISSIC
ARKANSAS BAR ID #76075
CPC DOCKET NO. 2009-043

NOV 19 2009

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee from a referral by the Arkansas Supreme Court to the Office of Professional Conduct. The information related to the representation of Steve Stewart by Gene E. McKissic in a criminal case in Ashley County Circuit Court.

On June 3, 2008, a Judgment and Commitment Order was filed with the Ashley County Circuit Court Clerk sentencing Mr. Stewart to a term of twenty years in the Arkansas Department of Correction. On June 19, 2008, Mr. McKissic filed a timely notice of appeal.

Rule 5(a) of the Rules of Appellate Procedure—Civil, requires that the record on appeal be filed with the clerk of the Arkansas Supreme Court and docketed therein within ninety (90) days from the filing of the first notice of appeal, unless the time was extended by order of the circuit court as provided under Rule 5. As the notice of appeal was filed on June 19, 2008, the record was due to be filed on or before September 17, 2008. On August 21, 2008, Mr. McKissic filed with the Ashley County Circuit Court a Motion for Extension of Time to File Transcript. The Ashley County Circuit Court granted the motion and extend the time for filing the record with the Arkansas Supreme Court Clerk to January 3, 2009. Rule 5(b)(2) of the Rules of Appellate Procedure—Civil, however, provides that in no event shall the time be extended more than seven months from the date of the entry of the judgment or order.

Mr. McKissic tendered the record to the Arkansas Supreme Court Clerk on January 7, 2009. The Clerk refused to file the record as the time for filing the record had expired on January 3, 2009, pursuant to Rule 5(b)(2). Mr. McKissic was directed to file a Motion for Rule on the Clerk.

Mr. McKissic filed a Motion for Rule on the Clerk on January 12, 2009. The Arkansas Supreme Court granted the Motion for Rule on the Clerk on January 30, 2009, and referred the matter to the Committee on Professional Conduct.

Pursuant to the decision in *Gillaspie v. Ligon*, 357 Ark. 50, 160 S.W.3d 332 (2004), no response to a Formal Complaint is required in matters referred to the Committee in disciplinary matters involving Motions for Rule on the Clerk. No response was provided by Mr. McKissic. In the Motion for Rule on the Clerk which was attached to the Formal Complaint, Mr. McKissic stated that the transcript was completed and tendered to the Arkansas Supreme Court Clerk two days after the expiration of the seven month time period listed in Rule 5. Mr. McKissic acknowledged that it was his responsibility to see that the transcript was lodged on time and by inadvertent mistake the deadline was missed. Mr. McKissic further stated that he miscalculated the seven month time period that the transcript would be due.

Upon consideration of the formal complaint and attached exhibit materials and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Gene E. McKissic's conduct violated Rule 1.3 when he failed to file the record of the lower court proceedings on behalf of his client, Steve Stewart, on or before the expiration of the seven-month limitation provided by Rule 5(b)(2) of the Arkansas Rules of Appellate

Procedure-Civil. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. Gene E. McKissic's conduct violated Rule 8.4(d) when his failure to file a the record with the Arkansas Supreme Court Clerk on or before January 3, 2009, resulted in a delay in the orderly and timely resolution of appellate proceedings and Mr. McKissic's failure to timely file his client's record with the Arkansas Supreme Court Clerk required the Court to expend additional time and effort which would not have been necessary otherwise. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that GENE E. MCKISSIC, Arkansas Bar No. 76075, be, and hereby is, CAUTIONED; fined the sum of FIVE HUNDRED DOLLARS (\$500.00); and assessed costs in the amount of FIFTY DOLLARS (\$50.00) for his conduct in this matter. The fine and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: Valerie L. Kelly
Valerie Kelly, Chair, Panel B

Date: August 25, 2009